Bail Slip

The Appellant in Crl.A.No.1039/98 (Accused in S.C.No.49/98 dated 24/11/98 on the file of the Addl. Sessions Court, Pondicherry at Karaikal) Viz.Ravikumar @ Babu was directed to be released on bail as per order of the this Court dated 3/8/2000 made in Crl.Mp.No.1417/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-06-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.1039 of 1998

Ravikumar @ Babu ..Appellant

-vs-

State of Pondicherry
rep. By the Inspector of Police
Nedungadu Police Station
Karaikal
(Crime No.18/97) .. Respondent

This appeal is filed against the Judgment made in S.C.No.49/1998 dated 24.11.1998 on the file of the Additional Sessions Court,Pondicherry at Karaikal.

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For appellant : Mr.S.Ashok Kumar
Senior Counsel
For Mr.V.Parthiban

For respondent : Mr.M.R.Thangavel,
Public Prosecutor(for Pondicherry).

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JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.49 of 1998 on the file of the Additional Sessions Judge, Pondicherry.

2.The accused has been charged under Section 376 (1) IPC was convicted by the learned trial Judge and sentenced to undergo seven years rigorous imprisonment against which the accused has preferred this appeal.

3. The short facts of the prosecution case are that on 24.3.1997 at about 11.00 hours, the accused having a lust over the victim girl Selvi Anthonyammal taking advantage of the loneliness,trespassed into the house of the victim,when the victim was actually asleep bounced on her and committed the offence of rape punishable under Section376(1) of IPC.

4. The learned Additional Sessions Judge, Pondicherry at Karaikal, after taking cogizance of the offence, issued summons to the accused, and on his appearance furnished copies under Section207 of Cr.P.C. since the case is exclusively triable by the Court of Sessions, the learned Sessions Judge has committed the case to the Court of Sessions. The learned Additional Sessions Judge, Pondicherry at Karaikal , on the appearance of the accused framed charges under Section 376(1) of IPC and when questioned, the accused pleaded not guilty.

5. On the side of the Prosecution , P.Ws 1 to 13 were examined. Exs P1 to P25 were exhibited and M.Os 1 to 13 were marked.

6. P.W.1 is the victim girl. According to her, she was alone in the house on 24.3.1997, and was taking a nap,after finishing her household work, resting on a cot in her house,at 11.00.a.m., she suddenly woke up due to a bang and saw the accused entering into her house and bolted the door from inside. While she was about to get up from the bed, the accused caught hold of her hands and pushed her in a cot and due to this forcible attack, the glass bangles got broken and the broken glass bangle pieces caused scratches on her hands and after causing minor injuries, he has committed the offence of rape. According to her, in the cross examination due to the criminal act, she was profusely bleeding on her private part. After committing an offence, the accused had left her house after criminally intimidating her which prevented her from making any distress call in his presence. Soon after he left the place , she raised alarm which made the neighbour Anandajothi, came to her rescue,to whom, she had narrated what had happened to her. Later she contacted her aunt by name Viswasamary, who in turn, had informed her(P.W.1) uncle by name Pilavendran who brought a taxi in which she was taken to Government General Hospital, Karaikal accompanied by her aunt Viswasamary , uncle Pilavendran and her neighbour Anandajothi wherein she was admitted as an in patient for treatment. On the next day, around noon, she preferred Ex P1 complaint to the police who came there. The police have seized M.O.1 (series) broken glass bangles ,M.O.2 Saree,M.O.3 inskrit, M.O.4 another

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inskirt ,M.O.5 Jacket and M.O.6 bra.

6a. P.W.2 is Anandajothi. According to her, she is working as a holder in the Police Ambulance and that she was on rest on 24.3.1997 and according to her, 0n 24.3.1997 at about 11.00 a.m., while she was taking water in a panchayat tap, she saw the accused coming out of the house of P.W.1 and when she enquired about this, the accused fled away and suspecting some thing wrong, she entered the house of P.W.1 and on hearing the cry of P.W.1, she asked her what had happened to her. P.W.2 has narrated what P.W.1 had told to her and that she had informed Pilavendran, the uncle of P.W.1 who had brought a taxi in which P.W.1 was removed to Government General Hospital, Karaikal and that P.W.1 had preferred a complaint and the police have recovered M.O.2 to M.O.6 from P.W.1 under Ex P2 Mahazar.

6b. P.W.3, Doss @ Irudayaraj. After hearing the incident through P.W.2, he with the help of Pilavendran brought a taxi in which P.W.1 was taken to Government General Hospital, Karaikal and on the next day, the police came to the house of P.W.1 and seized blood stained sand M.O.7 and broken glass bangle pieces M.O.1 (series) and then he went to the house of the accused from where the police have seized a half sleeve shirt, a cut baniyan, while polyster dhothi and one jatti belonged to the accused under Mahazar. M.O.1series(broken bangle pieces four in number) were seized under Mahazar ExP3. M.O.8 Half shirt, M.O.9 cut banian, M.O.10 Jatti M.O.11 Polyester dhothi were seized under Ex P4 mahazar in his presence.

6c. P.W.4 is the mother of P.W.1.She would say that after hearing the occurrence through Pilavendran, the brother of her(P.W.4) husband came to Government General Hospital, Karaikal and saw P.W.1 in an unconscious stage. Visuvasamary, who was sitting by the side of her daughter(P.W.1) collected the wearing apparels of P.W.1, stating that they were blood stained and therefore, she asked her to bring them after washing and accordingly she washed the blood stained wearing apparels of P.W.1 with the assistance of her younger daughter Priya and brought them back to Hospital after being dried up.

6d. P.W.5 is the doctor who had examined the accused Ravikumar and the request made by the Station House Officer of Nedungadu police station. Ex P5 is the report showing that the accused is capable of performing sexual intercourse.

6e. P.W.6 is the doctor who had collected the blood samples of the accused Ravikumar and the accused Anthonyammal(P.W.1) and after collecting the blood samples in two separate bottles, labelled , packed and sealed them and handed over them to the Sub Inspector of Police, Nedungadu Police Station, on the next day ie., on 16.9.1997 at 12.30 hours. Exs P8 and Ex P6 are the requisition letters received by him(P.W.6) from the Sub Inspector of Police, Karaikal and also from Station House Officer, Nedungadu Police Station. Exs P7 and P9 are the endorsements in Ex P6 and Ex P8 respectively.

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6f. P.W.7 is the doctor who had examined the victim on 24.3.1997 at about 4.10 p.m., at Government Maternity Hospital,Karaikal. She found P.W.1 in excessive bleeding in her private part from that day morning. On enquiry, P.W.1 Anthonyammal, had informed her that the accused Ravikumar has cause for her excessive bleeding in her private part. The doctor has found that hymen was ruptured, no external injuries were seen over the geneetilia, no bite marks seen over the body and breasts of the victim. Sample blood was collected for V.D.R.L.test and also for T.C.,D.C., test and R.H.factor test. X ray was taken for ascertaining her age and opinion from dental surgeon and also from the Radiologist were obtained. She was treated as an in patient and discharged on 31.3.1997. The final opinion was given in the light of CSFL report. The age of the victim as per the result of the dental examination and radiological examination, approximately, is around 25 years.. The doctor has opined that heavy bleeding is only due to tear in the lateral veginal wall which was heavily damaged was then sutured with cat gut. The doctor has deposed that she has not seen any external injury or sign of violence over her body. The doctor has further opined that the victim is mentally matured enough to have sexual intercourse. The doctor has further opined that on an examination of the body and the private part , the victim should have an act of like that of sexual intercourse since the hymen was lax and vagina roomy. Through the clinical examination, she has opined that there is evidence of recent sexual intercourse by P.W.1. Ex P11 is the final opinion given by her (P.W.7). Ex P12 is Form 95 evidencing delivery of sample containing pubic hair and the veginal smear of the victim Anthoniammal to be sent to CFSL ,Hyderabad. Ex P13 is the intimation to the town Police station about the victim Anthoniammal.

6g. P.W.8 is the photographer who had taken photographs for the scene of occurrence .Ex P.14 is the positives and Ex P15 are the negatives for the above positives.

6h. P.W.9 is the constable who had taken the blood samples and handed it over to CFSL, Hyderabad for chemical anyalsis.

6i. P.W.10 is the constable who brought the chemical analyst's report and serological report from CFSL ,Hyderabad. P.W.11 is the Junior Scientific Officer, CFSL, Hyderabad, a Doctorate who had examined the contents of the material objects received from the Court of JFCM, Karaikal concerned in Crime No.18/97 of Nedungadu Police Station for chemical analysis. Ex P16 is the first report of P.W.11. Ex P17 is the second report of P.W.11 dated 31.12.1997. He would depose that on examination the blood found on the saree cuttings, the blood group found was "A" and the blood stained on the petti coat belonged to blood group"A: in EX P17, the blood stains found on the petti coat cuttings are all human but he has not given any specific blood group, due to the disinterrgation of the substances.

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6j. P.W.12 is the Judicial Magistrate who had recorded the statement of P.W.1 Anthonyammal under Section 164(4) of Cr.P.C. Ex P18 is the statement of P.W.1 recorded by P.W.12.

6k. P.W.13 is the Sub Inspector of Police who after hearing the occurrence over phone from Government Hospital, Karaikal wherein P.W.1 was taking treatment and on his arrival to the Government Hospital, he found the victim P.W.1 in a conscious state of mind and received oral complaint which was reduced to writing by HC 1100 in his presence and obtained her signature and on the basis of the said complaint, the case was registered under crime No.18/97 under Sections 376,342,448 of IPC. He has visited the place of occurrence and collected the material objects like blood stained sand and sample sand etc. He seized the wearing apparels which was used by the accused at the time of occurrence in the presence of witnesses. He has examined the witnesses and recorded their statements. After giving the requisition letter for sending the blood samples collected in this case for chemical analysis at the Central Forensic Science Laboratory, Hyderabad. After analysis, reports were received from CFSL,Hyderabad and brought to the Court.Ex P22 is the requisition letter.After completing the investigation, he has filed the chargesheet against the accused.

7. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, he would deny his complicity with the crime.

8. After going through the materials available on record before the trial Court by the prosecution including the oral and documentary evidence, the learned trial Judge has come to a conclusion that the offence constituted under Section 376(1) of IPC has been made out against the accused by the prosecution beyond any reasonable doubt and accordingly convicted the accused under Section 376(1) and sentenced him to undergo seven years Rigorous imprisonment, without slapping any fine amount. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

9. Now the point for consideration in this appeal is whether the offence contemplated under Section 376(1) of IPC has been committed by the accused has been proved beyond any reasonable doubt by the prosecution to sustain the sentence awarded by the learned trial Judge?

10..Heard Mr.S.Ashok Kumar, learned Senior counsel appearing for the appellant and Mr.M.R.Thangavel, learned Public Prosecutor(Pondicherry) for respondent and carefully considered their rival submissions.

11. The learned Senior Counsel Mr.S.Ashok Kumar, would focus the attention of this Court to the main argument that if the sexual intercourse is committed with the consent of the victim,who is aged above18 , then the offence under Section 376(1) of IPC will not be

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attracted to warrant conviction. In support of his contention, the learned counsel would rely on the evidence of P.W.1 which was not ,according to the Senior Counsel, corroborated with the medical evidence of P.W.7. According to P.W.1, at the time of occurrence, the accused had caught hold of her hands and due to force used by him, her glass bangles got broken and the broken pieces caused scratches in her hands and by using force, the accused had committed the offence of rape on her. In the cross examination, her specific allegation is that during the course of committing the offence, the accused had caused some injuries and nail mark on her cheek and also the accused had forcibly closed her mouth and there were bleeding injuries found on the cheek. She would further go to the extent of saying that while, the accused was shutting her mouth, she had bitten on the palm of the accused and thereby caused bleeding injuries on the palm of the accused. She would categorically say in the cross examination that while the accused was holding her both hands, the glass bangles got broken and punched on her forearm of both hands and caused bleeding injuries on both arms of both hands and that at that time, she was wearing ten glass bangles on each hands and all the ten glass bangles on each hand got crushed and that all the ten glass bangles in each hands crushed and fell down inside the house. She is very definite in her deposition that while, resisting the sexual assault made by the accused, she had sustained contusions and scratches all over her body and that due to enormous force used by the accused at the time of occurrence, her wearing apparels also got damaged particularly her saree torn into pieces. According to her, due to the force used by the accused, there were bleeding scratches on her chest while, she was resisted the sexual assault of the accused. According to her, she had also received injuries on the outside of the private part. She would categorically depose that previous to this incident, she did not have any sexual connection with any one.

12. P.W.7, the doctor who had examined the victim on 24.3.1997 at 4.10p.m., at the Government Maternity Hospital, Karaikal. According to her, P.W.1 was brought to the Hospital by uncle with the excessive bleeding in her private part from that day morning. The Doctor P.W.7 who had examined genetilia of the victim has deposed that hymen of the victim was ruptured and no external injury was seen over the genetilia and no bite marks seen over the body and breasts of the victim. She had found that there was a lalteral vaginal wall tear about 6 cm x 5 cm bleeding profusely was then sutured with cat gut. The doctor has opined that the victim was aged around 25 years approximately on her physical appearance .To ascertain her age, radiological and dental examination were done. She has very definite in her evidence that she has not seen any external injuries on the body except injuries on her private part.

13. The very important piece of evidence of P.W.7 is that P.W.1 used to an act like that of sexual intercourse since the hymen was lax and vegina roomy. The cross examination of P.W.7 the doctor has deposed to the fact that since the genetilia of the victim was lax and vegina roomy, she must be used to an act like that of sexual intercourse that means she

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did have similar practice earlier on many occassions. She would further depose in the cross examination that there is no bite or nail mark on the body of P.W.1 or sign of violence, she has opined that there is no sexual assault on P.W.1. Further in the re-examination, she has given reason for profuse bleeding from the private part of P.W.1. According to P.W.7, due to abnormal pressure or force by the person who had sexual intercourse with the victim, there was a tear of mucus membrane of the vaginal wall resulting profuse bleeding.

14. The learned Senior counsel relying on a decision reported in Mohan Lal -vs- Sate of Rajasthan(2003(2)Crimes 501(SC) and contended that in a case of similar nature,the only question which has to be considered is whether the prosecutrix was a consenting party to the offence. The short facts of the above said ratio is that the appellant before the Apex Court Mohanlal was tried before the Court of Sub Judge, SC/ST(P.A.C.C) in Criminal Case No.4 of 1997 charged for an offence under Section 376 of IPC and under Section 3(2)(5) of the SC/ST(Prevention of Atrocities) Act. The accused was found guilty of an offence under Section 376 of IPC and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.20,000/- with default sentence. The appellant was however, acquitted from the charges levelled against them under Section 3(2)(5) of SC/ST (Prevention of Atrocities) Act. The appeal preferred by the accused against the conviction and sentence was dismissed by the High Court of Rajasthan which necessitated the appellant to prefer the appeal by Special Leave to the Honourable Apex Court. The case of the prosecution is that P.W.1 who is the daughter of P.W.2 is a resident of village Birdhwal in the district of Sri Ganganagar. The appellant is also a resident of the same village. On 8th October,1996 at about 10.00 or 11.00 a.m., while she was proceeding with one Draupadi, wife od Bhani Ram to cut grass. Draupadi induced her to accompany her to the house of the appellant who was his"Jeth" (husband's elder Brother) on the pretext of collecting her sickle and cloth sheet, where she was confined in a room belonging to the appellant who was present inside the room. He confined her in that room for about 3-4 hours and during this period raped her. At one time, she had come out of the room in the courtyard when she was seen by her brother P.W.5 who resided in the adjacent house, but she was again pushed by the appellant and kept confined there for some more time. P.W.5 became suspicious having seen a girl in the courtyard of the appellant of the appellant. P.W.3, the brother of P.W.5 and P.W.5 came to the accused and P.W.5 asked him to call P.W.2, the informant , father of the prosecutrix. P.W.2 was informed that the girl is in the house of the appellant and the prosecution witnesses finally brought out the victim from the house with the help of P.W.5. P.W.2 went to the police station and preferred a complaint .Before the trial Court, it was contended as a matter of defence that no such occurrence took place and that the accused has been falsely implicated . In the alternative, it was submitted that the prosecutrix was the consenting party and therefore an offence under Section 376 of IPC is not made out and the Court below have proceeded on the basis that she was in any case above 16 years of age on the date of occurrence. But before the trial Court, the prosecutrix herself has stated that she was

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married a year before the occurrence and at that time, her age was 18 years. The honourable Apex Court , while deciding the issue whether an offence under Section 376(1) of IPC as alleged by the prosecution has been made out against the accused, have incidently raised the question whether the prosecutrix was a consenting party to the crime. While allowing the appeal preferred by the accused, the observations of the Honourable Apex Court is as follows:

> " In this regard the medical evidence is not of much assistance since the prosecutrix was a married woman and habituated to sexual intercourse as deposed byDr.Beniwal, P.W6. He did not find any injury on the body of the prosecutrix and on her private parts. One thing is, however, noticeable, namely that according to the prosecutrix when the appellant tried to rape her, on account of her resistence, her bangles were broken and injuries were caused to her wrist. No such injury was also found on the person of the prosecutrix. We have, therefore, to closely examine the evidence of the prosecutrix and other witnesses..... We have noticed these omissions and contradictions in her cross-examination only with a view to test the credibility of this witness because the conviction of the appellant is based primarily on her evidence. We find that in the course of investigation, she had not stated that she was forcibly pushed inside the room of the appellant or that the appellant had slapped her and out of fear she did not raise a hue and cry, or thaht after the appellant went away, she was not permitted to leave by the wives of the two brothers of the appellant but on the contrary she had hidden herself inside the room after having been seen by P.W.5".

15. Since there was no external injuries found on the person of the prosecutrix, the Apex Court is of the view that there was no force used by the accused in committing an offence of rape and that the victim / prosecutrix is of 18 years old, since there is no medical evidence to corroborate her evidence regarding the injuries said to have been sustained in the course of the force used by the accused at the time of committing the crime is not proved , the accused cannot be convicted under Section 376 of IPC.

16.The above said dictum in all four corners applies to the present facts of the case. The learned trial Judge has convicted and sentenced the accused only on the basis of the evidence of P.W.1 without taking into consideration, the age of the victim, which is according to the prosecution, 23 years and also without considering the non corroborative medical evidence regarding the external injuries spoken to by P.W.1 at the time of occurrence sustained at the hands of the accused.

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17.Yet another flaw in the prosecution case pointed out by the learned Senior counsel is that the material objects like blood stained wearing apparels at the time of commission of the offence, like M.O.2 saree cutting , M.O.7 blood stained sand, M.O.3 and M.O.4 petti coat cuttings were sent to Central Forensic Science Laboratory, Hyderabad for chemical analysis, contained stains of blood belonging to group "A", whereas Ex P16 serologist's report dated 31.12.1997 (at page 76 of the typed set) shows that the blood group of the victim is "O" and the blood group of the accused is "B". So it goes without saying that the material objects sent for analysis do not contain the blood group of the victim as well as the blood group of the accused. Further it is pertinant to note in this case that as per the evidence of P.W.4, the mother of the victim P.W.1 , she had immediately washed the blood stained wearing appearels of the victim handed over to her by one Visuvasamary (who was not examined in this case) on 24.3.1997 itself,at the time when the victim was admitted in the hospital for treatment. So it is clear that there is no possibility of sending the samples with stain of blood belonging to the group of the victim.

18. These two important points were not at all being raised and considered by the learned trial Judge while convicting and sentencing the accused under Section376 IPC. Further it is in evidence through the Doctor P.W.7, that the accused is subject to intercourse even prior to this occurrence whereas P.W.1 in her evidence would depose that before the occurrence, she never had any intercourse with any person.

19.Under such circumstances, it cannot be said that an offence under Section 376 of IPC has been committed by the appellant/accused.For the above said reasonings, I constrained to interfere with the findings of the learned trial Judge in convicting the accused under Section 376 of IPC and sentencing him to seven years rigorous imprisonment. The point is answered accordingly.

20. In fine, the appeal is allowed and conviction and sentence under Section 376 of IPC awarded by the learned trial Judge in S.C.No.49 of 1998 on the file of First Additiional Sessions Judge, Pondicherry at Karaikal is set aside and the accused/appellant is set at liberty forthwith, if he is not required in any other case. Bail bond executed by the appellant shall stand cancelled.

sg

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Judicial 1st class Magistrate, Karaikal

2. -do- through The Chief Judicial Magistrate, Pondicherry

3. The Additional Sessions JudgeI, Pondicherry at Karaikal.

4. -do- through The Principal Sessions Judge, Pondicherry

5. The Superintendent of Central Prison, Pondicherry

6. The Public Prosecutor, Pondicherry

7. The Inspector of Police, Nedungadu Police Station,Karaikal

TEJ(CO)
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